No 09-985

IN THE

Supreme Court of the United States

STACY ANN PATTERSON,

Petitioner,

v

AFSCME # 2456,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

MOTION FOR RECONSIDERATION OF DENIAL OF WRIT OF EXTRAORDINARY RELIEF/WRIT OF MANDAMUS

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MOTION FOR RECONSIDERATION OF DENIAL OF WRIT OF EXTRAORDINARY RELIEF

Introduction

Stacy Ann Patterson, the Petitioner, argues that this Honorable Supreme Court must reconsiders its denial of the Petitioner's Writ of Extraordinary Relief of April 18, 2010, since she is being restrained of her liberty in a meaningful manner, especially in light of the fact that she has been taken advantage of throughout the legal process due to her disabilities The decisions below deviated from the protection of the Americas with Disabilities Act and well as constitutional protection

Exceptional circumstances warrant the exercise of the Court's discretionary powers and adequate relief cannot be obtained in any other form This is the Petitioner's last opportunity to receive justice and be able to pursue claims of discrimination, violation of civil liberties, and violation of due process

Throughout her employment and throughout the legal process, it has been well known that the Petitioner suffered from a neurological condition which affects her brain Given her disabilities of short-term memory loss, her employer, a state agency, and her union, failed to provide the accommodations to assist the Petitioner to be trained in her position as well as be given performance reviews that took into

consideration her limitations The Union solely dismissed her complaints of the unfairness that the Employer ambushed the Petitioner's unhealthy work environment

The American with Disabilities Act was applicable to the Petitioner who had a short term memory disability She further had no or little training to teach her necessary skills Disabled workers must be protected from an unfair and unhealthy working environment To protect the Petitioner's as well as all disabled citizens' liberties, unions must serve their role to promote public policy and protect disabled employees

Given the pattern of behavior, the Union should have properly represented the Petitioner during hearings, not force her to accept settlements that were unfavorable, not pressure her to accept positions that she was not qualified for, and follow procedures to represent a union-paid employee The Union invaded the Petitioner's civil liberties, and relief under this Writ for Extraordinary Relief is the last opportunity to enforce justice The Writ for relief must be reconsidered

STATEMENT OF THE CASE

Procedural History

Stacy Ann Patterson, the Petitioner, (hereinafter referred to as "Petitioner"), filed a complaint in the United States District Court for the District of Pennsylvania against AFSCME 2456, the Respondent, (hereinafter referred to as the "Union"), on May 25, 2007 citing sufficient facts to prove violations of the Pennsylvania Human Relations Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act

The Union denied the allegations in an Answer dated August 3, 2007 Later, on February 6, 2008, the Union filed a Motion for Summary Judgment alleging that the Petitioner could not meet her burden of proof as a matter of law

The Petitioner filed at first a partial response to the motion and then an Opposition stating sufficient facts to overcome her burden of proof On May 14, 2008, the District Court granted the Union's Motion for Summary Judgment Thereafter, the Petitioner filed a Notice of Appeal on May 28, 2008 to the Third Circuit Court of Appeals

On March 26, 2009, the Third Circuit affirmed the District Court's decision The Petitioner filed a Peti-

tion for Rehearing On April 23, 2009, the Third Circuit denied the Petition

The Petitioner filed a Writ for Certiorari with this Honorable Court The Writ was denied on October 15, 2009 Thereafter, the Petitioner filed a Petition for hearing The Petition was denied on November 30, 2009

The Petitioner filed a Writ of Mandamus for Extraordinary Relief which was denied on April 18, 2010 The Petitioner timely requests reconsideration of the denial of the Writ of Mandamus

STATEMENT OF FACTS

The Petitioner was hired by the Pennsylvania's Commission on Crime and Delinquency, where she became a union dues payor Then the Petitioner began a position at the Office of Inspector General (the "Employer"), on January 18, 2000, as an Information Technology Technician Her union was the Respondent

When she was hired, the Employer and the Union were informed of the Petitioner's perceived disability was hydrocephalus The perceived disability caused damage to her right optic nerve and she has no depth perception Also, due to an accident in 1998, the Petitioner suffered from a mental impairment

Even after she was hired, in January of 2000, the Petitioner notified her immediate supervisor at the

time, Berney Ortiz, of her perceived disability Several months later in April 2000, the Petitioner again notified Mr Ortiz as well as her team leader Dennis Lauer of her perceived disabilities The Employer assigned tasks to the Petitioner that required memory tasks that were difficult due to her disability as well injuries from her car accident

Approximately a year later in March 2001, the Petitioner notified her bureau director, Michael Hayes, who had just become her acting immediate supervisor pending the results of the internal investigation Mr Hayes had started when the Petitioner blew the whistle on March 12, 2001 Thereafter in November 2001, she notified her then current supervisor, Bill Barrett, of her perceived disabilities

Unfortunately, the Union never responded or investigated into the claims The Union intentionally offered Patterson new positions of clerk and other demotion positions where the Union knew that she could not perform given her disabilities

Moreover, the Petitioner was never promoted as an employee of the Pennsylvania Commission on Crime and Delinquency, which she began in February 1995 as an Information Technology Technician The Petitioner commenced as a computer Systems Analyst 1 Unfortunately, on April 7, 1998, the Petitioner was involved in a severe motor vehicle accident, her injuries included head and mental injuries Five months after the accident, the Petitioner was

able to return only part time and then partial days When she eventually returned to work, the Petitioner's department had been shifted to a different section and she had a new supervisor, Linda Rosenberg, who hired an intermediate supervisor between her and the Petitioner The Petitioner was treated different and filed a grievance, and once again, the grievance never got heard The Union encouraged the Petitioner to keep bidding on other open positions instead of investigating the merits of her complaint

When the Petitioner received a performance review of "needs improvement", the Petitioner filed a grievance which once again did not get heard because she received a new position In order to avoid the investigation of crucial facts and patterns of behavior, the Union would fail to act and just assist in finding the Petitioner a new position

When the Union realized it had erred in handling Patterson's complaints, then it dismissed its paying member On August 22, 2003, the Union issued a letter stating that the Petitioner's grievances were denied by the Union's State Committee Panel with no other explanation

The Union tried to transfer her and did not complain of the lack of training During her membership with the Union, the Petitioner filed at least eight grievances with great detail Unfortunately, the Union never responded or investigated into the claims

A union cannot refuse to take a case to binding arbitration As a full paying member, the Petitioner's liberties were violated when the union decided that they were not going to take the case to arbitration

By violating the Petitioner's civil liberties, the Union never questioned why the Employer rated her performance as 'unsatisfactory' The Petitioner was never given an explanation by the Employer and the Union never pursued in receiving an accurate explanation of why the Petitioner's performance was unsatisfactory and how to improve or get appropriate training

The Petitioner was forced to execute incorrect performance appraisals The Union never made the initiative to protect the Petitioner's liberties Due to the lack of training and proper protection given her known short term memory loss disability, the Petitioner was subjected to inappropriate evaluations

Throughout the numerous grievance processes, the Petitioner notified the Union of her disability and her medical conditions that affected her job training and performance Even though the Union knew of her disabilities, Ron Aitken repeatedly told the Petitioner that she should worry most about staying employed and that staying employed was easier to if she was "no on the outside looking in" The Union intentionally offered the Petitioner new positions of clerk and other demotion positions where the Union knew that she could not perform given her disabili-

ties The Union failed to represent the Petitioner with valid grievances against her Employer Furthermore, the Union ceased representing her in her grievances against the Employer The Union decided without justification not to proceed in arbitration and make prejudicial decisions with the Petitioner's grievances

On August 22, 2003, the Union issued a letter stating that the Petitioner's grievances were denied by the Union's State Committee Panel with no other explanation

Since she was denied relief from state Commissions

ARGUMENT IN SUPPORT OF MOTION FOR RECONSIDERATION FOR WRIT FOR EXTRAORDINARY RELIEF

Introduction

The Petitioner's Writ of Mandamus for Extraordinary Relief should have been granted The Petitioner respects that before a mandamus may issue, a party must establish that (1) no other adequate means (exist) to attain the relief she desires," (2) the party's "right to issuance of the writ is 'clear and indisputable,'" and (3) "the writ is appropriate under the circumstances" Cheney v U S Dist Court for D C , 542 U S 367, 380-381 (2004) This Court will issue the writ of mandamus directly to the federal district court "only where a question of public importance is involved, or where the question is of such a nature that it is peculiarly appropriate that such action by the court should be taken" Ex parte United States, 287 U S 241, 248-249 (1932)

The Petitioner has met her burden of proof and this Honorable Court must reconsider its decision

I. THE PETITIONER HAS NO OTHER MEANS OF RELIEF FOR HER DAMAGES

The district and appellate courts have failed to acknowledge the disabled Petitioner and protect her liberties The Union should have protected her from unsupported performance appraisals and discriminatory employment practices The Petitioner was dismissed without any form of protection from the Union The administrative agency and the judicial system have dismissed all of the Petitioner's claims

The right to petition for rehearing of an order denying certiorari "is not to be deemed an empty formality as though such petitions will as a matter of course be denied Accordingly, on an appropriate showing that a substantial matter is to be presented, appropriate opportunity should be given for doing so " Flynn v United States, 75 S Ct 285, 286 (1955) (Frankfurter, J , in chambers) Relying on this principle, the Court has not hesitated to postpone reconsideration of orders denying certiorari where deferral advances the interests of justice and judicial efficiency See United States v Ohio Power Co , 351 U S 980 (1956) ("continu[ing]" petition for rehearing until the following Term), see also United States v Ohio Power Co , 353 U S 98, 99 (1957) (explaining deferral of rehearing petition on ground that "[w]e have consistently ruled that the interest in finality of litigation must yield where the interests of justice would make unfair the strict application of our rules"), Vail Mfg Co v NLRB, 68 S Ct 32 (1947)

(deferring consideration of petition for rehearing of order denying certiorari)

The Petitioner suffers from short-term memory loss She was disabled and should have been protected by the Union and be given all the training as other employees and be given an explanation as to performance reviews No court or administrative agency has given her the opportunity to present the merits of her complaint The denial of the Writ of Mandamus must be vacated and the salient issues and public policies be addressed by the Court

II. THE PETITIONER'S RIGHTS ARE CLEAR AND UNDISPUTABLE SINCE HER CIVIL LIBERTIES HAVE BEEN VIOLATED.

The Petitioner was never provided any protection Suffering from brain and neurological damage, she should have been given the same opportunities as other employees However, the Union failed to provide the protection to its paid member The Petitioner tried to seek relief via the administrative process but was denied any form of relief A regular status employee has not been given adequate notice of the reasons for dismissal if the only reason given is "continued unsatisfactory work performance" *Wood v Department of Public Welfare*, 411 A 2d 281 (Pa Cmwlth 1980) The Writ before this Honorable Court has exceptional purpose given the Union's

failure to represent a due-paying member during hearings, forced her to accept settlements that were unfavorable, pressured her to accept positions that she was not qualified for, and failed to follow procedures to represent a union-paid employee The Union failed to interfere and investigate into numerous discrimination claims and pressurized the Petitioner in attempting to take less desirable working conditions and never got an explanation as to the difference between satisfactory v unsatisfactory performance appraisal, why training was denied, and what accommodations were taken for a disabled Petitioner

The Petitioner's civil liberties were violated since she was not afforded any protection, especially in light of her disabilities Still, the Petitioner is being denied positions through civil service due to her whistle blow of the Employer's and Union's lack of prosecution of a sexual assaultor in the workplace

The Union's failure to properly act was a violation of the Petitioner's due process Moreover, the Third Circuit and District Court misapplied the burden of proof at the summary judgment stage resulting in a violation of the Petitioner's right of not having a jury trial The Petitioner is warranted extraordinary relief

The Union's failure to properly represent the Petitioner at different hearings, including the one at the State Committee Panel level The decision to go or

not go to arbitration was made at the State Committee Panel level hearing Since the Petitioner was not given an explanation of method of valuation and her interests were not properly protected throughout the grievance process, the Petitioner's, a known disabled employee, was discriminated against by her Employer and the Union A union must be held accountable when it fails to protect employees from Employer's known discriminatory practices Title VII of the 1964 Civil Rights Act prohibits "discrimination.. because of gender" Oncale v Sundowner Offshore Services, 66 U S L W 4175 (U S March 5, 1998), McClain v NorthWest Community Corrections Center Judicial Corrections Bd , 440 F 3d 320, 332 (6th Cir 2006) The Union's stated reason is not credible and is a mere pretext for discrimination Tysinger v Police Dept of City of Zanesville, 463 F 3d 569, 576 (6th Cir 2006) Not only did the Employer discriminate against her due to her gender, known disabilities and retaliatory acts, the Union discriminated against the Petitioner as well by not getting appropriate answers to the methods of evaluation, investigating and defending her interest

Given that she was denied the opportunity to be trained to receive a satisfactory review and that the Union failed to force the demand for training, especially given her neurological known disabilities, the Petitioner's liberties have been violated If given the opportunity, the Petitioner would submit substantial evidence to discredit any proffered reason that dis-

crimination was more likely than not a motivating or substantial cause of the adverse action See Fuentes v Perskie, 32 F 3d 759, 764 (3rd Cir 1994), Toire v Casio, Inc , 42 F 3d 825, 830 (3rd Cir 1994)

The Petitioner continues to suffer from the Union's acts given that she can not obtain a civil position Her civil liberties under Title II which was drafted to protect citizens similar to Petitioner have been violated 42 U S C A § 12101, 42 U S C § 12131

The Act requires that the Petitioner show that she has an impairment that substantially limits at least one major life activity See Doe v County of Centre, PA, 242 F 3d 437, 447 (3d Cir 2001) See 29 C F R § 1630 2(i) (giving examples of major life activities as "caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working")

The decisions have yet to consider the Petitioner's claim of ADA violations and its integral relationship to the incorrect performance appraisals that the Petitioner has been subjected to The Union must be held responsible to investigate and pursue the allegations to the Petitioner's benefit By failing to do so, the Union must be held in concert liability with the Employer

III. THE WRIT IS APPROPRIATE UNDER THE CIRCUMSTANCES AND THUS RECONSIDERATION IS JUSTIFIED.

Under the facts and the circumstances, the Writ should have been granted and thus the decision denying the special relief must be reversed The Petitioner was never given proper notice of the purpose of her termination U S Supreme Court guarantees that a civil service employee must be given notice for specific cause and an opportunity to be responded prior to termination Cleveland Board of Education v Loudermill, 470 U S 532 (1985) A removal notice must be framed in a manner which enables the employee to discern the nature of the charges and to prepare adequately her defense Chavis v Philadelphia County Board of Assistance, 29 Pa Commw 205 208, 209, 370 A 2d 445, 447 (1977)

The denial of the writ must be reversed To justify the granting of a writ of habeas corpus, the Petitioner must show that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court The Petitioner has met her burden of proof Her civil liberties cannot be protected without the grant of this Writ for Extraordinary Relief

CONCLUSION

For the foregoing reasons, Stacy Ann Patterson, the Petitioner, respectfully requests that this Honorable Court reverse its denial of the Writ for Extraordinary Relief

Dated this 10th day of May, 2010

Respectfully submitted,

Stacy Ann Patterson,
The Petitioner
Pro Se